

**IN THE HIGH COURT OF TANZANIA**  
**DAR ES SALAAM DISTRICT REGISTRY**  
**AT DAR ES SALAAM**  
**MISC.CIVIL APPLICATION NO. 290 OF 2019**

*(Arising from Matrimonial Cause No. 19 of 2018  
Kinondoni District Court)*

**REGINA MAJEBELE.....APPLICANT**

**VERSUS**

**JOEL SWAI.....RESPONDENT**

**RULING**

*Date of last order: 29/10/2019*

*Date of Ruling: 31/12/2019*

**S.M. KULITA J;**

This is an application for an extension of time to appeal to the High Court. The application is made under section 14(1) of the Law of Limitation Act [Cap 89 R.E. 2002]. The application is accompanied with a chamber summons and the affidavit deposed by **REGINA MAJEBELE**. The said applicant seeks for extension of time to appeal to the High Court against the decision of the District Court of Kinondoni in Matrimonial Cause No. 19 of 2018.

This application was disposed of by way of written submissions, the applicant submitted that the application was made by way of Chamber Summons supported by an affidavit sworn by the applicant, REGINA MAJEBELE and prayed for the same be adopted as part of her submission.

In the affidavit the applicant prays to be granted leave to file the appeal to the High Court out of time, and the reasons are stated in paragraphs 3 and 4 of the affidavit.

In her written submission the applicant stated that the power to extend time is discretionary. She said that the provisions of section 14(1) do not state on which ground the court should rely when granting extension of time, what is required is that the applicant should state sufficient reasons for delay.

The applicant went on to state that she has been suffering from eyes problem which led her to spend a lot of time for treatment at the CCBRT hospital. After the treatment the applicant started to look for the legal assistance to file an appeal, for that she was late for seven days to file an appeal within time. She also stated that the cause for delay was out of her personal capacity.

The applicant concluded her submission by praying for the court to extend time for her to file the appeal.

In reply, the respondent JOEL SWAI submitted that the judgment for the matter was delivered on the 18<sup>th</sup> April, 2019 and this application for the extension of time was made on 24<sup>th</sup> May, 2019, it means the application was still in time because the provisions of section 80(2) of the Law of Marriage Act requires the aggrieved part to appeal within 45 days.

The respondent further submitted that the applicant misconceived the provisions of the law because under the provisions of the law of marriage was still within time to file her appeal when this application was filed.

In conclusion the respondent prayed for the dismissal of this application as it has no merit.

It is a trite law that an application for extension of time is entirely in the discretion of the court, however in exercising such discretion the court has to consider the guidelines stated in the precedents like those analysed in the case of **LYAMUYA CONSTRUCTION COMPANY LTD VS BOARD OF REGISTERED TRUSTEES OF YOUNG WOMEN'S CHRISTIAN ASSOCIATION OF TANZANIA, CIVIL APPLICATION NO.2 OF 2010, CAT AT ARUSHA (UNREPORTED)** which are the following;

- (i) *The applicant must account for all the period of delay.*

- (ii) The delay should not be inordinate.*
- (iii) The applicant must show diligence and apathy, negligence or sloppiness in the prosecution of the action that he intends to take.*
- (iv) If the court feels that there other sufficient reasons such as the existence of point of law of sufficient importance, such as illegality of the decision sought to be challenge.*

With regard to the application at hand the applicant specifically in paragraph 3 of her affidavit has given an account for the delay. She stated that her delay was due to the fact that she was getting treatments at the CCBRT hospital. I believe that falling sick is beyond a human control, it is something which cannot be foreseen.

The respondent retaliates that the application was still in time since the Law of Marriage Act requires an appeal in relation to matrimonial cases to be lodged within 45 days. But the application for extension of time according to section 14(1) of the Law of Limitation Act can be made either before or after the expiry of prescribed time. Therefore the application being filed before expiry of time is not fatal and the same should be granted provided that sufficient cause has been established. As the Law of Marriage Act is silent on the issue of extension of

time the general rule, that is, section 14(1) of the Law of Limitation Act applies.

In the view of the foregoing reasons I am satisfied that the applicant had sufficient cause, she also acted promptly, reasonably and diligently enough for this court to warrant her extension of time.

I find this application has merit hence allowed. The applicant to file her appeal within 30 days period from the date of this ruling. No order as to costs.



**S.M. KULITA**

**JUDGE**

**31/12/2019**